United States Court of Appeals

for the Second Circuit

APPENDIX

74-1914

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B P/S

UNITED STATES OF AMERICA,

Appellee,

-against-

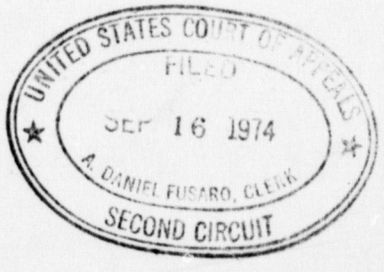
RUSSEL DICKERSON,

Appellant.

Docket No. 74-1914

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



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PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

73CRIM. 754

JUDGE BRIEANT

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U.S.:* 264-6433
vs.	Alan R. Kaufman
RUSSELL DICKERSON and	
JULIUS SYKES	
	For Defendant:

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk					
J.S. 3 mailed ✓	Marshal					
Violation	Docket fee					
Title 18						
Sec. 111 Assault on a Special Agent of the BNDD.						
ONE COUNT						

DATE	PROCEEDINGS
8-3-73	Filed Indictment.
8-7-73	Adj. to Aug. 8,1973. RUSSELL DICKERSON
8-8-73	Deft Pleads/not guilty, 10 days for motions, application for bail reduction denied without prejudice to renewal before Judge Brieant deft cont'd on $5,000 bail. Ward,J. (case assigned to Judge Brieant.)
8-8-73	**Defendant (atty present) pleads not guilty. 10 days for motions. Bial application denied, without prejudice to renew before Judge Brieant. Deft. cont'd on $5,000.00 bail. Case assigned to Brieant, J. WARD, J.**
	ENTERED TWICE SEE ABOVE
10-23-74	**RUSSELL DICKERSON-(atty present) defendant remanded in lieu of bail fixed at $5,000.00 PRB secured by $500 cash. Conditions of bail: deft. to reside with his wife; not change his address; get suitable employment, and enter a drug rehabilitation program. BRIEANT, J.**
11-20-73	**RUSSELL DICKERSON (Atty. Present) Bail reduced to R.O.R. Deft. discharged from custody of U.S.Marshal. condition of bail deft. to surrender** (cont'd on page 2)

DATE	PROCEEDINGS
	(cont'd. from page 1) to N.Y. State Parole Officer. BRIEANT,J.
12-5-73	Filed Govt's. notice of readiness for trial.
12-10-73	RUSSELL DICKERSON - Filed affdvt. for W/H/C Ad Pros. Ret. 12-17-73.
12-28-73	RUSSELL DICKERSON - Filed MEMO END on motion to dismiss indictment. Motion denied. ***. So Ordered. BRIENAT,J.
12-28-73	Filed Govt. memo of law.
2-6-74	RUSSELL DICKERSON - Filed remand dated. 11-20-74.
2-19-74	RUSSELL DICKERSON-Jury trial begun ~~for~~ before Brieant, J.
2-20-74	Trial Cont'd.
2-21-74	Trial Cont'd.
2-22-74	Trial cont'd. and concluded. Jury verdict GUILTY. Pre-sentence investigation ordered. sentence adj'd until 4-5-74. R.O.R. BRIEANT, J.
June 4-74	Filed transcript of record of proceedings, dated 2/22/74
June 4-74	Filed transcript of record of proceedings, dated 2/19/74
6-20-74	RUSSELL DICKERSON - Filed Judgment(Atty.Carl Works present)the deft is committed for imprisonment for a period of TWO YEARS.....Deft is cont'd on own recognizance pending appeal on condition he continue with the Beth Israel drug program..... Brieant, J.....Ent.6-28-74----------
6-27-74	RUSSELL DICKERSON- Filed Notice of Appeal from the Judgment entered on June 20, 1974. Leave to proceed on appeal informa pauperis is granted-BRIEANT,J. Mailed notice to Deft & Atty.

K:ilf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73CRIM. 754

UNITED STATES OF AMERICA

-v-

RUSSELL DICKERSON and
JULIUS SYKES

Defendants.

INDICTMENT

73 Cr.

The Grand Jury charges:

On or about the 27th day of July, 1973, in the Southern District of New York, RUSSELL DICKERSON and JULIUS SYKES, the defendants, unlawfully, wilfully and knowingly did forcibly assault, resist, oppose, impede, intimidate and interfere with a Special Agent of the Drug Enforcement Administration, formerly the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, said Special Agent being a person designated in Title 18, United States Code, Section 1114, while said Special Agent was engaged in the performance of his official duties.

(Title 18, United States Code, Section 111).

Foreman

PAUL J. CURRAN
United States Attorney

Russell Dickerson (atty present)

FEB 19 1974 Jury trial began.

Feb 20, 1974 Trial Cont'd.

Feb 21, 1974 trial cont'd.

Feb 22 1974 trial cont'd. + Concluded. Jury verdict: Dft. Guilty.
P.S.I. ordered. Sentence adj'd to 4/5/74
R.O.R.

Bryant, J.

Mar 20, 1974 R. Dickerson (atty. Carl Worden) present.
Sent. to 2 yrs. ROR pending appeal on
condition he continue with Youth Treatment Drug program.

Bryant, J.

RW

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

RUSSELL DICKERSON and
JULIUS SYKES

Defendants.

INDICTMENT

(18, USC, § 111)

PAUL J. CURRAN

United States Attorney

A TRUE BILL

Foreman

FPI—SS-1-13-70—20M—4925

U.S. DISTRICT COURT
FILED
AUG 3 1973
S.D. OF N.Y.

Aug 7 - adj to Aug 8.

Aug 8. Deft Pleads not guilty, 10 days for motions, application for bail reduction Denied, without prejudice to renewal before Judge Briant. Def held on $5,000 Bail. Ward, J. CT. Case assigned to Judge Briant

10/23/73 Dept. Dickerson (Atty Carl Works) present. Dept. remanded in lieu of bail fixed at $5,000 PRB secured by $500. Conditions of bail - dft reside with wife; not move his address; get suitable employment and enter a drug program. Briant, J.

11/26/73 Dept. Dickerson (atty Carl Works) present. Bail reduced to O/R (co-signed), dft. discharged from custody this federal charge. Bail dft to surrender to Newfoundland police officer. Briant, J.

CHARGE OF THE COURT

(In open court; jury present.)

THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave will do so now or remain until the completion of the Court's charge.

THE COURT: Mrs. Reckson, members of the jury:

We are now at that stage in the trial where you will soon undertake your final function as jurors. Here you perform one of the most sacred obligations of citizenship, that is acting as ministers of justice.

You are to discharge this final duty in an attitude of complete fairness and impartiality and, as was emphasized by me when you were first selected here, without bias or prejudice for or against the Government or the defendant as parties to this controversy.

Let me state, the fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, individuals and Government alike, stand as equals before the bar of justice in this court.

Your final role here is to decide and pass upon the fact issues in this case. You are the sole and exclusive judges of the facts. You determine the weight of the

evidence. You appraise the credibility or truthfulness of the witnesses. You draw the reasonable inferences from the evidence and you resolve any conflicts as there may be in the evidence.

I shall later tell you how you determine the credibility of witnesses.

My final function here is to instruct you as to the law and it is your duty to accept these instructions as to the law and to apply them to the facts as you may find them to be.

Now, you are not to consider any one instruction which I give you alone as stating the law, but you must consider all of my instructions taken together as a whole.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that the lawyers, either for the Government or the defendant, may have said with respect to matters in evidence, whether during the trial or in a question or in argument or in summations, is not to be substituted for your own recollection of the evidence.

So, too, anything that I might say during the trial or anything I might refer to during the course of these instructions as to any matter in evidence is not to be taken in lieu of your own recollection.

Now, the attorneys not only have their right, but it is their duty to make objections and to press whatever legal theories they may have. They are simply performing their duty. Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken out by the Court must be disregarded in its entirety. Put out of your mind any exchanges which may have occurred during the trial between the lawyers or between any attorney and the Court. It is not my function to favor one side or the other or to criticize anybody in any way whatsoever or to indicate to you, the jury, in any way that I have any opinion as to the credibility of a witness or as to the guilt or innocence of the defendant. That is your function, yours alone, and I leave it entirely with you.

So, please do not assume that I hold any opinion in any matters concerning this case and please do not reach any conclusion that I may have some attitude or that I may tend to favor one side or the other in the case. I do not.

Now, of course the indictment here is no evidence of the crime charged. Instead, an indictment is merely the method or procedure under the law whereby persons accused of crimes by a grand jury are brought into court to have their guilt or innocence determined by a trial jury, such as yourselves. Therefore, the indictment must be given no

evidentiary value, but shall be treated by you only as an accusation. It is not evidence or proof of a defendant's guilt that he has been indicted and no weight or significance whatsoever is to be given to the fact that the indictment has been returned against the defendant.

He has pleaded not guilty and thus the Government has the burden of proving the charge beyond a reasonable doubt.

A defendant does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment. This presumption of innocence was in his favor at the start of the trial, as I believe I told you before. It continued in his favor throughout the entire trial and it is in his favor now and remains in his favor during the course of your deliberations in the jury room, and the presumption of innocence is removed only if and when you, the jury, are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

Of course, unless you are so convinced, you must find him not guilty.

Now, the question naturally comes up, what is a reasonable doubt? Well, members of the jury, these words almost define themselves, that is, a doubt founded on reason

arising out of the evidence in the case or lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is a doubt that appeals to your reason, to your judgment, to your common sense and your experience. It is not caprice or whim or speculation or conjecture or suspicion. It is not an accusation to avoid the performance of an unpleasant duty and it is not sympathy for a defendant.

If after a fair and impartial consideration of all the evidence you can candidly and honestly say you are not satisfied of the guilt of a defendant, that you do not have an abiding conviction of the defendant's guilt of a particular charge, in sum, if you have such a doubt as would cause you, as prudent persons, to hesitate before acting in matters of importance to yourselves. then you have a reasonable doubt and in that circumstance it is your duty to acquit.

On the other hand, if after such an impartial and fair consideration of all the evidence you can candidly and honestly say you do have an abiding conviction of a defendant's guilt, such a conviction as you would be willing to act upon in important and weighty matters of personal affairs of your own life, then you have no reasonable doubt and under those circumstances it is your duty to convict.

Reasonable doubt does not mean a positive certainty or beyond all possible doubt. If that were the rule, few men, however guilty they might be, would ever be convicted because it is practically impossible for a person to be absolutely and completely convinced of any controverted fact which, by its nature, is not susceptible of mathematical certainty.

For that reason the law in a ciminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Now, the indictment in this case, members of the jury, contains one count alleged against two defendants, Dickeron and Sykes. Mr. Dickerson, however, is the only defendant on trial before you and he is the only person whose guilt or innocence you will be asked to announce in your verdict.

Though, as I will explain to you shortly, in considering his guilt or innocence, you may have to determine the nature of the participation, if any, of Moses Young, Julius Sykes or the others.

In the determination of guilt or innocence, you must bear in mind that guilt is personal. The guilt or innocence of the defendant on trial before you must be determined separately with respect to him solely on the

evidence presented against him or the lack of evidence.

The case of a defendant stands or falls upon the proof or the lack of proof of the charges against him and not against somebody else.

The guilt or innocence of the defendant on trial here must be determined by the jury beyond a reasonable doubt solely on the evidence introduced against him or the lack thereof and not upon evidence against somebody else.

Now, Mr. Russell Dickerson is charged with having violated Section 111 of Title 18 of the United States Code which provides in pertinent part that:

"Whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in Section 1114 of this Title, while engaged in or on account of the performance of his official duties ..." is guilty of a crime.

Section 1114 of Title 18, United States Code, just referred to, designates, among other people, "an officer or employee of the Bureau of Narcotics and Dangerous Drugs," now known as the Drug Enforcement Administration.

So, reading these two sections together, then, an assault on an agent of the Bureau of Narcotics and Dangerous Drugs engaged in the performance of his official duties constitutes a federal crime.

I will read the charge against Russell Dickerson.

"The grand jury charges:

"On or about the 27th day of July 1973 in the Southern District of New York, Russell Dickerson and Julius Sykes, the defendants, unlawfully and knowingly did forcibly assault, resist, oppose, impede, intimidate and interfere with a Special Agent of the Drug Enforcement Administration, formerly the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice. Said Special Agent being a person designated in Title 18, United States Code, Section 1114, while said Special Agent was engaged in the performance of his official duties."

Now, in order to find the defendant guilty you must find the following facts beyond a reasonable doubt:

These are the elements of the crime.

First, that on July 27, 1973 Frank Balasz was employed by the Drug Enforcement Administration formerly known as the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice as a Special Agent and was then and there engaged in the performance of his official duties.

Second, that on July 27, 1973 Russell Dickerson forcibly assaulted or resisted or opposed or impeded or intimidated or interfered with Frank Balasz.

And third, that Russell Dickerson knowingly and

willfully did the act or acts charged.

You are instructed that it is not necessary that the Government prove that the defendant assaulted, resisted, opposed, impeded, intimidated and interfered with Mr. Balasz, as charged in the indictment. It is sufficient if you find beyond a reasonable doubt that the defendant did any one or more of the acts charged, that is, that he assaulted or resisted or opposed or impeded or intimidated or interfered with Mr. Balasz by the use of some force.

Now, what do these words "assault, resist, oppose, impede, intimidated and intefere" mean? Well, there is nothing difficult about those words. They each have their common everyday meaning.

The word "forcibly," as used in the law, modifies each of these words. "Forcibly" means the use of force or the threat to use it or the display of force in such a way and with intent to impede or intimidate or to interfere with a federal officer or employee while engaged in the performance of his duties.

An assault is an intentional, an unlawful attempt or threat to do injury to the person of another, when coupled with the apparent present ability to do so and an intentional display of force, such as to place the person against whom it is directed in reasonable fear of immediate

bodily harm.

An assault may be committed without actually touching, striking or committing bodily harm to another.

The word "resist" means to oppose by physical power, as to strive against, to counteract, defeat or frustrate physically.

The word "oppose" means to resist by physical means.

"Impede" is defined as stopping progress, to hinder.

"Intimidate" is defined as to make timid or fearful, to inspire or affect with fear, to frighten, to deter or overawe.

"Interfere" means to come into collision with, to intermeddle, to hinder, to interpose or to intervene.

The Government here contends, among other things, that Mr. Dickerson punched Balasz on the arm with his fist causing a bruise, and that Dickerson and Moses Young, acting together, had Mr. Balasz up against the car and they were forcibly striking him shaking his body and throwing his body against the car, and that the sum total of Dickerson's actions, coupled with those of Moses Young, had the effect of intimidating Balasz and placing him in fear, particularly after his gun fell to the ground while he was attempting to draw it out to protect or defend himself as he claims that he was.

Now, the defendant here contends that he never struck Balasz; that the scuffle was between Young and Balasz and not between himself and the complainant Balasz.

Now, you will recall that, in stating the elements of the crime, I said that before you can convict the defendant of the crime charged in the indictment you must, as one of the elements, find beyond a reasonable doubt that he acted knowingly and willfully. I direct your attention to the words "knowingly and willfully." The question is, what do these words mean? Is there something mysterious or complicated about the words "knowingly and willfully?"

First, let me instruct you as to what these words do not mean. They do not mean that the Government has to show that the defendant knew he was breaking a particular law before he can be convicted of the crime. They do not mean that the Government has to show the defendant intended to profit at the expense of the Government or any other person, nor do they have anything to do with his personal or private reasons for violating a statute. Four, after considering all of the evidence, in accordance with my instructions to you, you come to the conclusion that the defendant violated the statute, then and in that event his personal or private reasons for violating the statute are of no consequence as far as his guilt is concerned.

I instruct you that these words "knowingly and willfully" mean deliberate. They mean intentionally. In other words, "knowingly and willfully" mean that the defendant forcibly assaulted or resisted or opposed or impeded or intimidated or interfered with the federal officers consciously and intentionally.

The words "knowingly and willfully" are contrary to and opposed to the idea of an inadvertent or accidental action.

Now, knowledge and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question.

Direct proof is unnecessary. Knowledge and intent may be inferred by the jury from all the surrounding circumstances.

As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary consequences of his acts.

The next element you must find to have been proven

beyond a reasonable doubt is that at the time of the assault, if there was one, Mr. Balasz was engaged in the performance of his official duties. In order to find that Mr. Balasz was so engaged, you must find that Mr. Balasz was acting within the scope of his employment as a Special Agent of the United States Bureau of Narcotics and Dangerous Drugs or Drug Enforcement Administration at the time he was assaulted and interfered with, if he was, and that at that time he was not on some personal venture or frolic of his own.

The uncontradicted testimony is that Balasz, at the time of the incident, was acting in an undercover capacity in a criminal investigation with respect to narcotics and machine guns and was carrying out or attempting to carry out orders in the ordinary course of his duties as such an officer and, if you so find, then that element of the crime has been satisfied.

In this connection I wish to repeat and reemphasize the limiting instruction which I gave you earlier in the trial about evidence relating to the defendant having possible information about narcotics and dealings in guns. Mr. Dickerson has not been indicted for anything having to do with guns or narcotics and he is not on trial before you for anything except the charge contained in this indictment.

The evidence concerning narcotic information and

discussion of sale of a shotgun or a machine gun, which later turned out to be merely a carbine, is before you out of necessity to permit you to determine whether Mr. Balasz was acting at the time in his official capacity or merely engaged in some frolic or private enterprise of his own and also to place in context, so they may properly be understood, all the facts concerning the defendant's alleged conduct on July 27, 1973 and for those purposes only.

Now, if any of you jurors may have any bias or prejudice or personal feeling of any kind about guns or narcotics, you are to put it out of your mind and not to allow it to influence your verdict in any way because that is not what is being tried here.

Now, to prove the offense here charged, the Government is not required to prove that the defendant Russell Dickerson knew Mr. Balasz or even that he knew Mr. Balasz was a federal employee. It is no defense that the defendant did not know Mr. Balasz was a federal employee.

Congress has provided in the law which I read to you that whoever interferes with a federal employee in the manner described in the statute in the performance of his duty is guilty of an offense whether he does it with knowledge that the person with whom he is interfering is a federal employee or not and whatever may be his intent in so doing.

Now, you may wonder, then, why I permitted evidence to be received to the effect that the defendant claims that he did not know of the status of Balasz as a federal agent and you may want to know why, if it makes no difference whether or not he knew Balasz was a federal agent, I allowed him to testify that he did not know. You may recall that this ruling was made before Mr. Dickerson had testified that he never struck Balasz.

When I received the evidence, I believed he might testify that he did strike the Special Agent, but that he did so by mistake, not knowing he was an agent, and believing he was entitled to defense himself against a person he regarded merely as a hippie. Since the contention of self-defense was not made in this trial, but rather Mr. Dickerson says he never hit or intimidated the agent, it is now of no concern whatever to the jury whether the defendant knew at the time that Balasz was a federal officer or did not know and that is not a matter for your consideration.

Now, in addition to the contentions I have previously mentioned, the Government relies on another separate additional and perhaps different theory of law in this case, entirely separate and independent of the statute about which I have just instructed you. It contends that the defendant is guilty of the substantive offense charged in

the indictment. Even if he personally did not assault Special Agent Balasz because, they contend, the assault was committed in furtherance of and during the course of an unlawful criminal venture of which the defendant was a member.

The Government further contends that the object of the criminal venture was larceny by trick, false pretense, false promise or other means in violation of the laws of the State of New York, that is, that the defendant Dickerson, acting jointly or as partner with Moses Young and Julius Sykes, was engaged in a criminal venture. That is, that they intended, after taking the money of Balasz and Carroll for the sale of a gun and ammunition, to keep both the money and the gun. If this was their intention, that would be larceny and anybody who does such a thing knowingly and willfully would be engaged in a criminal venture.

Now, a joint criminal venture is liable for the acts and statements of his co-venturers, provided they were made within the scope of the unlawful agreement, as he saw it, during the pendency of the venture and in furtherance of its objectives and while this defendant was a party to this illegal scheme.

To find the defendant guilty of the crime charged under this alternative theory, you must find beyond a

reasonable doubt, first, that another person, in this case Moses Young or Julius Sykes, committed the assault charged and was a member of the illicit criminal venture.

Second, that the defendant knowingly and willfully became and was at the time of the assault a member of the venture.

And third, that the assault was committed in furtherance of the venture or its object.

In considering this theory you may rely on and consider the defendant's own testimony here to the effect that the scuffle was between Young and Balasz.

Now, the law permits a defendant upon his request to testify in his own behalf. The testimony of the defendant is before you. You must determine how far it is credible, the deep personal interest which every defendant has in the result of his case should be considered by the jury in determining the credibility of his testimony.

You are instructed that interest in the outcome of a case may create a motive for false testimony and that the greater the interest, the stronger is the temptation and the interest of a defendant is of a character possessed by no other witness and is, therefore, a matter which may affect the credence that should be placed on his testimony.

However, that is also a matter entirely for you to

determine using your own common sense in considering all the evidence in the case.

Admissions of the defendant, whether made in court or in an interview with an Assistant U. S. Attorney outside of court or any other admissions of a defendant are among the most effectual proofs in the law and constitute the strongest evidence against the party making it that can be given of the facts stated in the admissions. Accordingly, you are entitled to give great weight to the defendant's admissions in this case made on the stand or made in an interview testified to with an Assistant U. S. Attorney.

For your guidance in considering the evidence you have heard, I will tell you that there are two classes of evidence recognized and admitted in courts of justice upon either of which the jurors may find an accused guilty of a crime.

One is called direct evidence and the other is called circumstantial evidence.

Direct evidence tends to show the fact in issue without any need for any amplification. Though, of course, there is always the question of whether it is to be believed.

Circumstantial evidence is evidence that tends to show facts from which the fact in issue may reasonably be inferred. It is evidence which tends to prove the fact in

issue by proof of other facts which have a legitimate tendency to lead the mind to infer that the facts sought to be established are true.

For instance, it is sometimes difficult to tell merely by looking out of the window whether it is raining outside or not. But if you look out and you see people passing by in the streets have their umbrellas up, you will usually come to the conclusion that it is raining. You have direct evidence. The evidence of your own senses, your eyes, that tell you that the umbrellas are up and that constitutes circumstantial evidence from which you are entitled to conclude that it is raining.

In other words, circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts in issue. Circumstantial evidence, if believed, is of no less value then direct evidence for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

Now, in determining what testimony you will believe and what evidence you will accept, you must make your own evaluation of the testimony given by each of the witnesses and determine what you believe to be the truth and the degree of weight you choose to give to that testimony.

The testimony of a witness may fail to conform to

the facts as they occurred because the witness is intentionally telling a falsehood or because the witness did not accurately remember or see or hear what he testified about or because he has not expressed himself clearly in giving testimony. There is no magic formula by which you can evaluate testimony.

You bring to this courtroom today and use all the experience and background of your lives. In your everyday affairs you determine for yourselves the reliability of statements made to you by others.

The same tests you use in your everyday dealings are the tests which you apply in your deliberations.

You may, of course, consider the interest or lack of interest of any witness in the outcome of this case. A witness who is interested in the outcome of a case is not necessarily unworthy of belief. The interest of a witness, however, is a factor or possible motive which you may consider in determining the weight and credibility to be given to that testimony.

In doing this you may also consider whether the testimony of a witness is corroborated by the testimony of others or by documentary evidence or by exhibits.

You may also consider the bias or prejudice of a witness, if there be any, and the manner in which the witness

gives his testimony on the stand; the opportunity the witness had to observe the facts concerning which he testified and the probability or improbability of the testimony in the light of all the other events in the case.

You may also consider whether a witness had any motive to lie. These are all items to be taken into your consideration in determining the truthfulness and weight, if any, which you will assign to that witness' testimony.

If such considerations make it appear that there is a discrepancy in the evidence, you will have to consider whether this may be reconciled by fitting the two witnesses' testimony together. If that is not possible, you will then have to determine which of the two conflicting versions you will accept.

If you find that any witness has willfully testified falsely as to a material fact, you may, but you need not, disregard the entire testimony of that witness on the principle that one who testifies falsely about one material fact may testify falsely about everything, but you are not required to consider such a witness as totally unworthy of belief.

You may accept so much of his testimony as you deem true and you may disregard what you believe is false. You, the jury, as sole judge of the facts, determine which

of the witnesses you will believe, what portion of their testimony you will accept as true and what weight you will give to it.

Now, there is no duty on the part of the Government to call in witnesses whose testimony would be merely cumulative. You are to decide this case on the evidence which is before you or the lack of evidence and not upon evidence which might have been brought in.

Specifically, the Government had no duty to call Agent Carroll as a witness. Now, as I explained to you at the beginning of the trial, a defendant has no duty to call any witnesses or bring in any evidence. However, the power to subpoena witnesses is equally available to both sides and no inference adverse to the Government or the defendant follows upon the failure to call any person as a witness.

As I have just said, you are to decide this case on the evidence that has been brought before you and the lack of evidence in this record and only on that, and specifically you are not to decide the case upon any speculation or guesswork as to what some witness who was never called might have testified to had he been here.

Now, under your oath as jurors you cannot allow consideration of the punishment which may be inflicted upon the defendant, if convicted, to influence your verdict in

any way or in any sense to enter into your deliberations. The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in this case and determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence and the evidence alone and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal.

But, on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty as a clear warning that a crime of this character may not be committed with impunity. The public is entitled to be assured of this.

I am almost at the end. A word about deliberating. Each juror is entitled to his or her opinion. Each should, however, exchange views with fellow jurors. That is the very purpose of jury deliberations, to discuss and consider the evidence, to listen to the arguments of fellow jurors, to present your individual views and to consult with one

another and to reach a verdict based solely and wholly on the evidence if you can do so without violence to your own individual judgment.

Each one must decide the case for himself or herself after consideration with your fellow jurors. But you should not hesitate to change an opinion which you may hold, which after discussion with your fellow jurors, appears erroneous in light of the discussion viewed against the evidence and the law.

However, if after carefully weighing all the evidence and listening to the arguments of your fellow jurors you entertain a conscientious view that differs from the others, you are not to yield your judgment simply because you are outnumbered or outweighed or outvoted.

Your final vote must reflect your individual conscientious judgment as to how the case should be decided.

Now, in order to find a verdict it must be unanimous. Please, members of the jury, be polite and respectful towards each other in the course of your discussions in the jury room so that each juror will have his position made clear, and when you do reach a verdict, then each of you will know that it is a just one.

In the course of your deliberations you may desire to have some part of the testimony read to you or you may

find that you are uncertain as to the meaning of some part of the Court's instructions. Now, in any such case you may send a note to the Court through your foreman asking for whatever will clear up the question which you may have.

Now, in communicating with the Court please do not indicate how the vote is then decided. If you ask for a copy of the indictment by a note from your foreman, that will be sent into you, but as I noted to you before, the indictment is merely a charge or an accusation and it has no status as evidence.

If any other exhibit is requested, that will be sent into you also.

Your foreman will be Mrs. Reckson and she will send out any communications from the jury by delivering a note to a marshal.

Now, let me finally state; Your oath sums up your duty in this case, that is, without fear or favor to anyone you will well and truly try the issues between this defendant and the Government of the United States based solely upon the evidence and the Court's instructions as to the law. It is important to the defendant; it is important to the Government.

At this time will you swear the marshals, Mr. Clerk

THE CLERK: Marshals step forward.

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(Marshals sworn.)

THE COURT: Miss Fields and Miss Coleman, you were alternates on this jury and it now appears that we will not need your services. You are excused with the thanks of the Court. I appreciate your attendance here and the attention you have given to the evidence, and I ask you both to go to Room 109 and they will instruct you as to what you do next.

Members of the jury, the rest of you I will ask that you remain seated where you are briefly while I confer with the attorneys inside to see if there are any additional instructions which they would like to have me mention to you or anything I may not have covered in my previous instructions. In this regard, I ask you not to discuss the case while seated in the box because there is a possibility that I might find it proper to give you additional instructions which you may not presently have received.

Please remain where you are in the custody of the marshals and do not discuss the case. I will rejoin you in a very few minutes.

Mr. Works and Mr. Carey and the reporter, please come into the robing room.

(In the robing room.)

THE COURT: I will take additional requests first and then you may give me your exceptions.

MR. CAREY: Your Honor, the Government has no additional requeststo make at this time.

THE COURT: Mr. Works.

MR. WORKS: I have none.

THE COURT: All right. Do you have any exceptions?

MR. WORKS: Yes, with reference to the element of the additional crime that you instructed the jury about, what it really amounts to was a conspiracy to commit the larceny, I would object to that because, as I said before, it seems to me that that is the introduction of a separate crime for the jury and I think it would be confusing and in the confusion it will prove to be prejudicial to the defendant.

THE COURT: You may have an exception as to the entire portion where I charged the alternative agency theory based on an assault committed by Sykes or Moses Young. I really cannot accept your characterizing it as an additional crime. However, I understand the point you are raising and you have a full exception as to that. I decline to modify the charge in that regard.

I think your record is protected. Do you have anything else?

MR. WORKS: That is all.

THE COURT: All right, gentlemen.

(In open court.)

THE COURT: Members of the jury, I have nothing further to say to you at this time. I would now direct you to commence your deliberations and to withdraw to the jury room in the custody of the marshals. You may withdraw.

(Alternates excused.)

(At 3:55 p.m., the jury retired to deliberate upon a verdict.)

(At 4:30 p.m., a note was received from the jury marked Court's Exhibit 1 requesting Government's Exhibit 2 which was sent in.)

xx (Court's Exhibit 1 marked for identification.)

(At the side bar; at 5:10 p.m.)

THE COURT: Gentlemen, it is now almost 5:15 and it was represented to me earlier by Mr. Works in the robing room it is essential for him to attend at New York Hospital by 6 o'clock. I recognize the problem presented. Will it be satisfactory if we take the verdict in your absence assuming a verdict comes in? It is my present intention to let the jury go by 6 o'clock unless they show a desire to continue their deliberations later.

If anything of any nature arises which would require you to be heard before the Court could act on it, I would let it go over until tomorrow and I would expect you to be

here at 10 o'clock tomorrow unless you ascertain by telephone first thing in the morning to my chambers that it is not necessary.

If something purely trivial arises, such as a request to read all of somebody's testimony, I assume I could continue in your absence on that, but if your part is required, I will not read any testimony. I would let it go over until tomorrow.

Would that procedure be satisfactory?

MR. WORKS: It will be satisfactory, your Honor.

THE COURT: All right, then you are excused for the purpose of attending at the hospital.

MR. WORKS: Thank you.

MR. CAREY: The procedure is acceptable to the Government, your Honor.

THE COURT: All right.

(Recess)

(At 6:05 p.m., a note was received from the jury marked Court's Exhibit 2.)

xx (Court's Exhibit 2 marked for identification.)

(In open court; jury present.)

THE COURT: Members of the jury, I have the note, which has been marked Court's Exhibit 2. At this time it is slightly after 6 o'clock and I think it would be inappropriate

to continue any further proceedings later into the evening tonight because to do so might put someone in a position where he or she would feel subject to some pressure of time. So that I am going to let you go home for the night as soon as I finish my present remarks.

However, you have only been deliberating some two hours and it is, therefore, improper to suggest that you are deadlocked.

I want to give you some very specific instructions at this time. The jury is to return to the jury room promptly, assemble in the jury room at 10 o'clock tomorrow morning. Attendance will be taken at that time and you are under a direct instruction of the Court, each of you, that you are to be there in that jury room at 10 o'clock.

Now, until all twelve of you are present in that jury room, no one is to discuss the case because it is proper and necessary for every member of the jury to be involved in all deliberations, so if there are only ten or eleven of you in there, talk about something else, do not talk about the case until all twelve are present.

Now, I also instruct each one of you you are not to discuss this case with anyone else. You are not to speak to any of the parties or attorneys or witnesses, if you happen to meet them. You are not to go to any of the places

described in the testimony.

You are not to read or hear anything in the news or otherwise which might bear upon the subject matter of this case and be in some way prejudicial.

Just to emphasize the importance of my instructions to you and not because I believe any of you would violate it, but because I think these instructions are important enough so that I ought to put emphasis behind them.

A failure to abide by these direct instructions, which you are receiving from the Court at this time, could constitute a contempt of court and would be dealt with accordingly, so I do want every single one of you in that jury room at 10 o'clock sharp tomorrow morning.

Following that time I will take up with you what disposition ought to be made of the jury's most recent note. I will have you back in the courtroom sometime tomorrow morning and take that up with you.

All right, you are dismissed for the night.

(The jury left the courtroom.)

THE COURT: Mr. Dickerson, you can come back tomorrow morning at 10 o'clock. Court is adjourned.

(Time noted: 6:10 p.m.)

Certificate of Service

Sept 16, 1974

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Michael A. [illegible]